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No. .....

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1987

Robert S. Crowder, Sr., Julia J. Crowder, H. Allan McCartney and Henry C. Cooper,

Petitioners,

vs.

Southern Baptist Convention and Executive Committee of the Southern Baptist Convention,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

EMMET J. BONDURANT
JANE F. VEHKO
JOHN E. FLOYD
BONDURANT, MIXSON & ELMORE
2200 First Atlanta Tower
Atlanta, GA 30383-4501
(404) 581-5200

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COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

1. Does the First Amendment close the state and federal courts to all actions by members of a congregational church to enforce the provisions of its corporate bylaws that provide for majority rule, simply because the issue is labeled as an "internal church dispute," and despite the fact that the issue admittedly does not require the determination of any questions of religious doctrine or belief, and can be decided by the application of the same neutral principles of law that are applied by Georgia courts to other church disputes, which were specifically approved in *Jones v. Wolf*, 443 U.S. 595 (1979)?

2. Did the lower court err in holding that a state's interest in providing a judicial forum for the resolution of members' rights to majority rule provided by the constitution and bylaws of a state-chartered religious corporation are less substantial than a state's interest in resolving the formal title to church property and that, therefore, states are precluded by the First Amendment from providing a judicial forum for resolving disputes in the former category by the application of the same neutral principles of law that the state courts apply to other church disputes?

LIST OF PARTIES

The following were parties to the proceedings below:

Robert S. Crowder, Sr.
Julia J. Crowder
H. Allan McCartney
Henry C. Cooper
Southern Baptist Convention
Executive Committee of the Southern Baptist Convention

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at 828 F.2d 718 (11th Cir. 1987), and is reprinted in the Appendix hereto, App. 1-10, *infra*.

The opinion of the United States District Court for the Northern District of Georgia appears at 637 F. Supp. 478 (N.D. Ga. 1986), and is reprinted in the Appendix hereto, App. 11-33, *infra*.

JURISDICTION

This Court has jurisdiction to review the judgment of the United States Court of Appeals for the Eleventh Circuit by writ of certiorari pursuant to 28 U.S.C. § 1254 (1). The judgment of the Court of Appeals was entered on September 28, 1987. This petition for a writ of certiorari was filed within ninety days from that date.

CONSTITUTIONAL PROVISIONS INVOLVED

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const., Amend. 1.

STATEMENT OF THE CASE

The Nature of the Action

This is a diversity action brought in the District Court pursuant to 28 U.S.C. § 1332. Petitioners sought declaratory and injunctive relief against the respondents, the Southern Baptist Convention ("SBC"), which is a Georgia nonprofit corporation and its Executive Committee, which is incorporated under the laws of Tennessee. The SBC is organized as a congregational church (as distinguished from a hierarchical form of church governance) and is the largest Protestant denomination in the United States, with over 14,000,000 members, an annual budget of over $200 million and assets of over $2 billion. The dispute involved violations of the SBC Bylaws which occurred in connection with the election of one of the most powerful committees of the SBC during the 1985 annual meeting ("the 1985 Convention") held in Dallas, Texas, in June 1985. Petitioners Robert S. Crowder, Sr., Julia J. Crowder, H. Allan McCartney, and Henry C. Cooper were elected by their local Southern Baptist churches as voting delegates ("messengers") to the 1985 Convention. Petitioners challenged three important parliamentary rulings made during the 1985 Convention by the President and Chair of the Convention, Dr. Charles F. Stanley, as violations of the SBC Bylaws.

The Bylaw Violations

1. The Chair's Refusal to Allow a Motion to Amend the Nominating Report

The crucial rulings made by the chair during the 1985 Convention concerned the nominating report of the SBC's Committee on Committees. The Committee on Committees

is one of the SBC's most powerful bodies because it controls the nomination of candidates for the SBC's Committee on Boards, Commissions and Standing Committees (the "Committee on Boards"). The Committee on Boards in turn nominates candidates for the SBC's general boards, the trustees and directors of the Convention's institutions (such as its six seminaries) all standing committees, the Convention's commissions and the Executive Committee. SBC Bylaw 16(2) (App. 34). Of the many reports given at each Convention, the report of the Committee on Committees is among the most important, because it can, unless repealed or amended, influence the future composition of the Convention's most powerful bodies and how those bodies administer the Convention's assets and its annual budget. Petitioners alleged that the chair of the SBC deliberately violated the SBC's Bylaws when he twice ruled out of order motions from the floor to amend the nominating report of the Committee on Committees. That motion proposed to amend the nominating report by substituting a new slate of nominees for the list presented as the report of the Committee on Committees. Such motions are permitted under Section 12 of Robert's Rule of Order Newly Revised, which, pursuant to SBC Bylaw 11 governed the parliamentary proceedings at the 1985 Convention. The chair first ruled the motion out of order on the ground that Bylaw 16 permitted only amendments on an individual-by-individual nominee basis rather than a substitute-slate basis. This ruling was appealed directly to the floor of the Convention and was overturned by a majority vote of the messengers under Bylaw 32, which provides:

> 32. *Adoption of Reports:* The adoption of recommendations contained in reports to the Convention shall not bind the Convention on any other matters in the body of the reports; but *the Convention reserves the right to consider and amend the body of all reports.* (Emphasis supplied.)

Notwithstanding the Convention's vote that the motion to amend should be submitted to the floor for a vote, the chair again ruled the motion out of order—this time on the ground that the Bylaws permitted no amendments of *any* kind to the nominating report of the Committee on Committees.[1] Petitioners contended that this ruling was a violation of Bylaw 32.

Thus, the legal issue presented to the District Court was whether the Committee on Committees' nominating report is a "report" within the meaning of Bylaw 32.

2. The Chair's Refusal to Obey the Majority Vote of the Convention

Petitioners also challenged the chair's disregard of the vote by the majority of the Convention to overturn the chair's initial ruling and to permit the motion to amend to be submitted for a vote. Petitioners contended that the chair's action in ignoring the Convention's vote violated Bylaw 35, which provides: "All propositions, decisions, and choices shall be by a majority vote of the registered messengers present and voting . . . ."[2]

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[1]Bylaw 16(1) provides that the Committee on Committees "shall nominate" the members of the Committee on Boards in a nominating report to the Convention.

[2]The legal issue presented to the District Court was therefore whether the Convention's vote on an appeal of a parliamentary ruling by the chair is a "proposition[], decision[] [or] choice[]" within the meaning of Bylaw 35.

3. The Chair's Refusal to Recognize Appeals or Points of Order

Many messengers, including the petitioners, made vigorous and repeated attempts to raise points of order to challenge, or otherwise appeal, the chair's refusal to adhere to the Convention's vote and submission of the original unamended nominating report for a vote. The chair refused to recognize these messengers. Petitioners challenged this refusal as a violation of Section 23 of Robert's Rules of Order Newly Revised, which provides that points of order take precedence over any pending question.

The Absence of Any Question of Doctrine or Belief

The Respondents admitted that the bylaw violations alleged by petitioners did not require the District Court to determine any questions of religious doctrine or belief. The chair of the 1985 Convention testified that resolution of the merits issues would not require determination of any questions of religious doctrine or belief,[3] and respondents also admitted in interrogatory responses that

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[3]

> Q: Dr. Stanley, are you aware of any article of faith or religious doctrine that would help me determine whether the phrase all reports, for example, as it appears in Bylaw 32 means all reports or it means something else?
>
> . . . .
>
> A: I don't know of anything.

Stanley Dep., p. 224. Dr. Stanley further testified:

> Q. Do you think the fact that the Southern Baptist Convention is a religious body that uses Robert's Rules is a fact that will allow [*sic*—should be "affect"] how Robert's Rules is interpreted?
>
> . . . .
>
> A. Probably not.

Id. at 222-23.

the court need not interpret any article of faith or decide any question of religious belief or doctrine in order to determine whether the term "all reports" in Bylaw 32 includes the nominating report of the Committee on Committees. Defendants' Response to Plaintiffs' First Interrogatories, Response No. 4.

Georgia's "Neutral Principles of Law" Approach to Intrachurch Disputes

In the District Court petitioners argued (1) that the Georgia courts—whose substantive law governs this action against a Georgia nonprofit corporation and binds the District Court under *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)—have regularly exercised jurisdiction over intrachurch disputes involving the election or removal of church officers arising in precisely the context presented here—namely, a challenge to the procedural regularity of actions by a congregational church under its rules of government and where control over church property was only tangentially or indirectly involved[4]; (2) that the Georgia courts had adopted the "neutral principles of law" ap-

[4]*See, e.g., Reddick v. Jones*, 251 Ga. 195, 304 S.E.2d 389 (1983) (expressly applying the neutral principles of law approach approved in *Jones v. Wolf*, 443 U.S. 595 (1979), by examining a congregational church's bylaws to determine that the board of directors had acted without authority in firing minister); *Gervin v. Reddick*, 246 Ga. 56, 268 S.E.2d 657 (1980) (holding that deacons of Baptist church had improperly disregarded vote by majority of congregation not to appoint treasurer); *Rogers v. Robertson*, 222 Ga. 519, 150 S.E.2d 634 (1966) (resolving dispute over whether congregation's bylaws required majority vote of all members or only all active members prior to sale of church building); *Sanders v. Edwards*, 199 Ga. 266, 34 S.E.2d 167 (1945) (holding that Baptist minister had been properly removed in a congregational meeting conducted in accordance with the church's rule on calling business meetings); *Carlson v. Fox*, 198 Ga. 400, 31 S.E.2d 597 (1944) (holding that constitution of Baptist church did not give minister authority to appoint elders).

proach to resolving intrachurch disputes,[5] and (3) that Georgia's approach had been challenged and upheld as consistent with the First and Fourteenth Amendments in *Jones v. Wolf*, 443 U.S. 595 (1979).

Disposition in the District Court

The respondents moved to dismiss the complaint on the ground that the First Amendment prohibits courts from resolving any disputes concerning a church's "internal affairs" or "matters of church governance, polity and administration," even if the court need not resolve any question of religious doctrine or belief. Petitioners filed a cross-motion for summary judgment on the merits. Relying principally upon *Jones v. Wolf*, 443 U.S. 595 (1979), petitioners contended that interpreting the SBC Bylaws at issue, and thus enforcing the parties' intent as expressed in the bylaws they had freely chosen, would neither inhibit the free exercise of religion nor establish religion.

Treating respondents' motion to dismiss as a motion for summary judgment, the District Court granted judgment for respondents. 637 F. Supp. 478 (N.D. Ga. 1986)

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[5]The neutral principles of law approach was first mentioned in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* ("Hull Church"), 393 U.S. 440 (1969), and was approved as consistent with the First Amendment in *Jones v. Wolf*, 443 U.S. 595 (1979). Under the neutral principles approach, courts avoid questions of religious doctrine or practice, instead applying familiar concepts of contract, trust and property law, which are unaffected by questions of faith. *Jones, supra*, 443 U.S. at 603. Because of the interest in adjudicating intrachurch disputes and the need to avoid doctrinal issues, the Court in *Hull Church* concluded that as far as possible

> Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.

Hull Church, 393 U.S. at 449.

(App. 1-10). The District Court ruled that it "lacks jurisdiction over this action because it involves the resolution of an ecclesiastical controversy in violation of the First Amendment's requirement of separation of church and state." *Id.* at 480 (App. 5). The District Court rejected petitioners' reliance on *Jones v. Wolf,* reasoning "that the doctrine of neutral principles of law is not relevant in deciding whether a court can resolve a dispute, but is only applicable as a method of resolving a dispute over which a court has already determined it has jurisdiction." *Id.* The court further reasoned that the determinative First Amendment analysis required it simply to "decide the exact nature of the dispute." *Id.* at 481 (App. 7). Substituting labels for a reasoned analysis of how adjudication would threaten any of the evils proscribed by the First Amendment, the District Court concluded that "[w]hat is actually at issue . . . is a question of church governance." *Id.* Relying principally on *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976) ("*Milivojevich*")—a case decided *before* this Court's approval of Georgia's neutral principles approach in *Jones v. Wolf*—the District Court held that "a decision as to validity of [the chair's] rulings would involve this court in the internal affairs of the Southern Baptist Convention, a position the court cannot assume." 637 F. Supp. at 481.

The District Court made no finding that adjudication would impermissibly require decision of any question of doctrine or belief, nor did it apply this Court's well-settled tests for Establishment Clause and Free Exercise Clause violations. Instead, the District Court broadly held that the First Amendment automatically removes an entire category of disputes—"internal church affairs"—from the state and federal courts' jurisdiction.

Opinion Below

The Eleventh Circuit affirmed the District Court's decision, holding that the First Amendment bars civil court resolution of the dispute concerning the chair's parliamentary rulings. 828 F.2d 718, 727 (11th Cir. 1987) (App. 11, 32). In reaching this decision the Court of Appeals fashioned and applied a novel balancing test, never before articulated or applied by this Court, in evaluating Establishment Clause or Free Exercise Clause challenges.

According to the Court of Appeals, there are "two primary first amendment interests that favor judicial non-involvement" (*id.* at 722 (App. 20)), and these interests must be weighed against "the state interests in resolving disputes concerning rights to property and the individual interests in adjudicating before a civil court forum." *Id.* at 725 (App. 28). "The first of the[] first amendment concerns is the extent to which judicial resolution of the particular controversy would involve deciding issues of religious doctrine or beliefs." *Id.* at 722 (App. 20). Citing *Milivojevich* and describing *Jones v. Wolf* as "reaffirm-[ing]" the proposition, the Court of Appeals identified the second first amendment interest as follows:

> that where religious organizations establish rules for their internal discipline and governance, and tribunals for adjudicating disputes over these matters, "the Constitution requires that civil courts accept their decisions as binding upon them."

Id. at 724 (App. 25). With respect to the state and individual interests, the Court of Appeals again relied on *Milivojevich* as indicating that the state's interest in judicial resolution "is substantially diminished where the controversy does not concern formal title to property"

and concluded that the individual member's interest in judicial resolution is similarly "substantially lessened" when "religious organizations create a system of ecclesiastical tribunals to hear disputes concerning church governance or administration." *Id.* at 726 (App. 29).

The Court of Appeals acknowledged that this case might be resolved without deciding any questions of religious doctrine or belief. It nevertheless concluded that each of the four factors in its novel balancing test favored abstention. First, it relied on *Milivojevich* for the proposition that questions of " 'the composition of the church hierarchy are at the core of ecclesiastical concern.' " *Id.* at 726 (App. 30). Second, while acknowledging that the SBC is a congregational rather than hierarchical church body (*id.* n.20) and that "the record is unclear" as to whether the Executive Committee (the body empowered to act for the Convention when it is not in session, pursuant to Bylaw 20) has power to unseat an illegally elected committee (*id.* at 720 n.5 (App. 16)), the Court of Appeals applied the rule of deference it derived from *Milivojevich* and other Supreme Court decisions regarding disputes in *hierarchical* churches. Specifically, the Court of Appeals concluded that the Executive Committee's decision to treat as "history" any mistaken interpretation of the bylaws was a "decision by the highest church judicatory concerning a matter of church governance" that should be accorded deference. *Id.* at 726 (App. 31). The Court of Appeals thus unilaterally imposed a hierarchical form of church government on a clearly congregational entity.[6]

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[6]A hierarchical church is one "in which the local church is but an integral and subordinate part of a larger church and is

(Continued on following page)

Third, the Court of Appeals held that "the controversy bears only a tangential relationship to property rights." *Id.* at 726-27 (App. 31). Finally, the Court of Appeals concluded that the petitioners' voluntary effort—not required by church rules—in asking the Executive Committee to consider their grievance was "a hearing and a decision on their claims by the highest SBC tribunal" that rendered their interest in a judicial forum "insubstantial." *Id.* at 727 (App. 32).

REASONS FOR GRANTING THE WRIT

I. The Court of Appeals' Decision on the First Amendment Issue Conflicts With Applicable Decisions of This Court.

A. Conflict with Jones v. Wolf

Pervading the Court of Appeals' analysis of the First Amendment issue and motivating its deference to the

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under the autohrity of the general church." *Jones v. Wolf*, 443 U.S. 595, 619 (Powell, J., dissenting). In a congregational church "authority over questions of church doctrine, practice, and administration rests entirely in the local congregation or some body within it." *Id.* There is no dispute that the SBC has a congregational government. The SBC Constitution proclaims that the SBC is "independent and sovereign in its own sphere," does not answer to and is not supervised by any other body, and does not "claim and will never attempt to exercise any authority over any other Baptist body, whether church, auxiliary organizations, associations, or convention." SBC Constitution, Article IV. Within the SBC, the ultimate decision-making authority is likewise clear. As the Court of Appeals observed:

> "Bylaw 35 leaves little doubt as to the authority of a vote by a majority of the messengers: '[a]ll propositions, decisions, and choices shall be by a majority vote of the registered messengers present and voting, except where provisions have been made for a greater than majority vote.' "

828 F.2d at 720, n.8.

Executive Committee's action is the assumption that the First Amendment *requires* civil courts to accept as binding any decisions made by church tribunals in a dispute over matters of internal governance. According to the Court of Appeals, this Court's decision in *Jones v. Wolf* "reaffirmed" this rule.[7] In *Jones*, however, this Court expressly *rejected* this interpretation of the First Amendment's requirements.

Jones v. Wolf, this Court's most recent pronouncement on intrachurch disputes, involved a dispute between a local Presbyterian church and the general church over which faction within the local congregation had the right to possession of the church property. Following the Supreme Court's suggestion in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (*"Hull Church"*), 393 U.S. 440, 449 (1969), that resolution of a church property dispute using "neutral principles of law" would avoid First Amendment problems,[8]

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[7]The *Jones* majority . . . recognized and reaffirmed the importance of the second major first amendment interest favoring judicial noninvolvement in a religious dispute: that where religious organizations establish rules for their internal discipline and goverance, and tribunals for adjudicating disputes over these matters, *"the Constitution requires that civil courts accept their decisions as binding upon them."*

828 F.2d at 724 (App. 25), (quoting *Milivojevich*, 426 U.S. at 725) (emphasis added).

[8]In *Hull Church* this Court held that Georgia's "departure-from-doctrine" test, under which an implied trust remained in the general church provided it adhered to the tenets of faith as they existed at the time of the local church's affiliation, violated the First Amendment because it required decision of doctrinal questions. 393 U.S. at 449. The Court also suggested that "neutral principles of law, developed for use in all property disputes, can be applied without 'establishing' churches to which property is awarded." *Id.*

the Georgia courts adopted this approach[9] and employed it to resolve the dispute in *Jones*.

This Court granted certiorari in *Jones* to address the following First Amendment issue:

> The question for decision is whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the [intrachurch] dispute on the basis of "neutral principles of law," *or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church.*

443 U.S. at 597 (emphasis added). Over the objection of the dissenters that *Milivojevich* had settled this question (*id.* at 610 (Powell, J., dissenting)), this Court *rejected* the argument that the First Amendment compelled deference and held that Georgia's neutral principles of law approach was consistent with the First and Fourteenth Amendments.

> We cannot agree . . . that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved.

Id. at 605. Instead, the Court explained,

> "[A] State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith."

Id. at 602 (quoting *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring)).

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[9]See *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), *cert. denied*, 396 U.S. 1041 (1970); *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976).

Thus, contrary to the Court of Appeals' interpretation, *Jones* rejected rather than reaffirmed the proposition that the First Amendment requires deference to the decisions of a church tribunal.[10] Indeed, if *Jones* had established the proposition ascribed to it by the Court of Appeals, the result in *Jones* would have been quite different. The Presbyterian Church is a hierarchical church that vests decision-making authority in an ascending order of "courts." In *Jones* an authoritative tribunal within the Presbyterian church—the presbytery—had investigated the dispute within the local church and had ruled that the minority faction was the "true congregation" and therefore entitled to possession of the church property. 443 U.S. at 598; *see also id.* at 620-21 (Powell, J., dissenting) (arguing that the deference principle should be applied to affirm the presbytery's decision). Yet this Court did not defer to this resolution by "an authoritative tribunal of the hierarchical church" (*id.* at 597), but approved Georgia's use of the neutral principles approach, under which the Georgia courts had awarded the property to the majority faction.

Moreover, in *Jones* this Court also expressly rejected the Free Exercise Clause and Establishment Clause objections to Georgia's neutral principles approach that the respondents successfully urged in the District Court and

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[10]At one point in its opinion, the Court of Appeals paid lip service to the fact that *Jones* rejected a rule of compulsory deference. *See* 828 F.2d at 723 (App. 23). The Court of Appeals *ignored*, however, *Jones'* holding that the States are free to adopt the neutral principles approach, as has Georgia. Instead, it proceeded to apply a rule of deference as if the SBC were a hierarchical church and as if Georgia had not adopted the neutral principles approach.

Court of Appeals. Addressing the Free Exercise argument, the Court explained:

> The dissent also argues that a rule of compulsory deference is necessary in order to protect the free exercise rights "of those who have formed the association and submitted themselves to its authority." *Post,* at 618. This argument assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. *The neutral-principles approach cannot be said to "inhibit" the free exercise of religion,* any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds of the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

443 U.S. at 605-06 (emphasis added). This Court further explained that a rule of compulsory deference involves no less "entanglement" than the neutral principles approach since the deference approach *requires* civil court examination of "the polity and administration of a church to determine which unit of government has ultimate control over church property." *Id.* at 605.

In sum, the Court of Appeals' decision is in conflict with *Jones v. Wolf* in two respects: (1) in concluding

that " 'the Constitution *requires* that civil courts accept [the] decisions [of church tribunals on disputes over internal discipline and governance] as binding upon them' " (828 F.2d at 724 (App. 25)) when *Jones* expressly rejected the argument that the First Amendment requires such deference and instead left the States free to exercise jurisdiction over intrachurch disputes using either the neutral principles or deference approach, and (2) in failing to apply Georgia's neutral principles of law approach, which *Jones* held to be consistent with the First Amendment and which Georgia has chosen to apply to the precise type of intrachurch dispute presented in this case.

B. Conflict With Bouldin v. Alexander

The decisions of both the District Court and the Court of Appeals completely ignore this Court's holding in *Bouldin v. Alexander,* 82 U.S. (15 Wall.) 131 (1872). In *Bouldin* this Court resolved precisely the kind of dispute at issue in this case—namely, a dispute concerning the procedural regularity of an election under a congregational church's rules of government.

In *Bouldin* this Court reviewed a Baptist church's minutes and Baptist Church Manual and held that the plaintiffs had validly been elected as trustees by the required number of votes at the congregation's annual meeting. 82 U.S. (15 Wall.) at 138. The Court also held that the plaintiffs could not be removed by the congregation's later election of the defendants as trustees in plaintiffs' stead on the ground that the election was "in direct contravention of the church rules." *Id.* at 140.

> [Trustees] cannot be removed from their trusteeship by a minority of the church society or meeting, without warning, and acting without charges, without ci-

> tation or trial, and *in direct contravention of the church rules.*

Id. at 140 (emphasis added).

Thus, in *Bouldin,* which is the only Supreme Court decision involving a *congregational* church and which has never been overruled, this Court undertook precisely the kind of inquiry that petitioners asked the District Court to undertake in their challenge to the chair's parliamentary rulings. The lower courts' holding that the First Amendment precludes such judicial review is therefore in clear conflict with *Bouldin.*

C. Misinterpretation of Serbian Eastern Orthodox Diocese v. Milivojevich

Throughout its opinion the Court of Appeals relied heavily on *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976), giving it a far more expansive interpretation than is warranted by this Court's rationale in that case and applying it beyond the express limitations on the Court's holding.

According to the Court of Appeals, *Milivojevich* established a blanket rule of compulsory deference to the decisions of ecclesiastical bodies on matters of internal church governance. "*Milivojevich* . . . made it clear that the principle of deference to decisions of church authorities applies to disputes concerning matters of internal church governance." 828 F.2d at 724 (App. 26). *Milivojevich,* however, neither broadly proscribes judicial resolution of any dispute over the procedural regularity of church actions, nor does its alleged "principle of deference" apply to congregational rather than hierarchical churches.

Milivojevich was a challenge by a former bishop of the Serbian Orthodox Church, a hierarchical church, to

two actions by the Mother Church: (1) its decision that he be defrocked as a bishop and (2) its reorganization of the North American diocese. This Court held that the lower court had violated tne First Amendment in adjudicating the defrocking issue. 426 U.S. at 720. Contrary to the Court of Appeals' suggestion, however, the *reason* for the Court's holding was *not* that the defrocking issue addressed a matter of internal church governance or the procedural regularity under the church's rules of the Mother Church's action.[11] Rather, adjudication of the defrocking issue contravened the fundamental First Amendment ban on judicial resolution of *doctrinal* questions. In *Milivojevich* the bishop's "removal was based solely on his acts of defiance subsequent to his . . . suspension . . . and his violation of his oath and loss of certain qualifications for Bishop." *Id.* at 705. Clearly a resolution of the substantive question of whether the bishop's conduct was in defiance of church authority in a hierarchical church and a violation of his episcopal oath required a determination of questions or religious doctrine and belief. "[T]he [lower court] overlooked the clear *substantive canonical violations* for which the Church disciplined [the bishop]." *Id.* at 720. *See also id.* at 713 (review for arbitrariness of the Mother Church's action would impermissibly entail inquiry "into the substantive criteria by which they are supposed to decide the ecclesiastical question. But this is

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[11] Thus, the Court concluded that civil courts may not decide, consistent with the first amendment, whether the church complied with the procedural rules contained in the church constitution and penal code in defrocking one of its bishops. 828 F.2d at 725 (App. 27).

exactly the inquiry the First Amendment pronibits.'').[12] Thus, the essence of the First Amendment problem was the necessity of deciding questions of faith and doctrine, not the necessity of examining church rules and procedures.

The Court of Appeals also read too broadly the Court's holding on the bishop's challenge to the Mother Church's reorganization of the diocese in *Milivojevich*.[13] Contrary to the approach taken by the Court of Appeals the Court did not condemn the use of the "neutral principles" approach.[14] Nor did the Court conclude that the lower court had violated the First Amendment in resolving the reorganization issue merely because it required examination

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[12]The Court's repeated reference to the defrocking issue as a "religious dispute" confirms that *Milivojevich* fell within the core First Amendment prohibition on judicial decision of questions of faith. *See* 426 U.S. at 709 (referring to "[r]esolution of the *religious disputes at issue here*"); *id.* ("Resolution of the *religious dispute over [the bishop's] defrockment* . . . determines control of the property. Thus, *this case essentially involves* . . . *a religious dispute*, the resolution of which under our cases is for ecclesiastical and not civil tribunals."); *id.* at 720 ("the [lower court] has unconstitutionally undertaken the resolution of *quintessentially religious controversies* whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church") (emphasis added).

[13]

> Similarly, the Court held that civil courts may not use the guise of the "neutral principles" approach to delve into issues concerning whether the general church acted beyond its authority in declaring a reorganization of the diocese.

828 F.2d at 725 (App. 27).

[14]Indeed, *Jones v. Wolf* observed that *Milivojevich* contained an "approving reference" to this approach. *See* 443 U.S. at 603, (citing 426 U.S. at 723 n.15). The absence in *Milivojevich* of any broad condemnation of the neutral principles approach is also confirmed by the Court's observation in *Milivojevich* that "[w]hether corporate bylaws or other documents governing the individual property-holding corporations may affect any desired disposition of the Diocesan property is a question not before us." 426 U.S. at 724.

of church documents to determine questions of authority on matters of church government. Indeed, this Court's own examination of the Mother Church and Diocesan constitutions provided the basis for its ruling. The Court reasoned:

> Arts. 57 and 64 of the Mother Church constitution commit such questions of church polity [as reorganization of the Diocese] to the final province of the Holy Assembly. . . . The subordination of the Diocese to the Mother Church in such matters . . . was provided, and the power of the Holy Assembly to reorganize the Diocese is expressed in the Mother Church constitution. . . . *The constitutional provisions of the American-Canadian Diocese were not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity.*

426 U.S. at 721-23 (footnote omitted) (emphasis added).

Thus, the Supreme Court did what the Court of Appeals held is prohibited—the Court conducting its own examination of the church documents. Moreover, the Court based its holding on the lack of any clear contradiction in the Diocesan constitution of the express authority to reorganize the Diocese granted by the Mother Church's constitution. This lack of clarity meant that, if it interpreted the Diocesan constitution, the lower court would not be permissibly enforcing the parties' intent as expressed in church documents, but would be impermissibly dictating, in violation of the Free Exercise Clause, the form which church government should take.[15]

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[15]Because this was the true basis of the Court's ruling, the Court of Appeals also erred in drawing the following inference from *Milivojevich*:

> The *Milivojevich* Court's rejection of the state court's attempt to apply "neutral principles of law" to decide wheth-

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Finally, the Court of Appeals erred in interpreting *Milivojevich* as applicable to congregational as well as hierarchical churches. Both the Court's statement of the issue in *Milivojevich*, and its holding, demonstrate that its decision was restricted to hierarchical churches.

> We granted certiorari to determine whether the actions of the Illinois Supreme Court constituted improper judicial interference with decisions of the highest authorities *of a hierarchical church* in violation of the First and Fourteenth Amendments.

426 U.S. at 698 (emphasis added). Similarly, this Court summarized its holding as follows:

> In short, the First and Fourteenth Amendments permit *hierarchical religious organizations* to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Id. at 724-25 (emphasis added).

In a congregational body such as the SBC, there are no "subordinate bodies" that are subject to the "government and direction" of a higher authority, and majority will is the governing principle. By applying a deference principle developed for hierarchical churches and treating the Executive Committee as the "highest church judica-

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> er the reorganization at issue complied with the church constitution suggests that the state's interest in providing a civil court forum for ecclesiastical disputes is substantially diminished where the controversy does not concern formal title to property.

828 F.2d at 725-26 (App. 29). The absence of any question of formal title was *not* the ground on which this Court reversed the lower court's decision.

tory" and "highest SBC tribunal," the Court of Appeals improperly imposed on the SBC a form of church government other than that which it has chosen.[16]

II. The Court of Appeals' Decision On The First Amendment Question Conflicts With The Decisions Of State Courts Of Last Resort.

In contrast to the opinions below, several state courts of last resort have held that there exists no First Amendment impediment to the judicial resolution of non-doctrinal intrachurch disputes through the application of neutral principles of law. *See, e.g., Morris v. Scribner,* 69 N.Y.2d 418, 515 N.Y.S.2d 424 (1987) (jurisdiction exercised in intrachurch dispute concerning alleged misapplication of church funds); *Reid v. Gholson,* 229 Va. 179, 327 S.E.2d 107, *cert. denied,* 474 U.S. 824 (1985) (jurisdiction exercised over dispute concerning alleged irregularities in Baptist church's elections and business meetings); *Reddick v. Jones,* 251 Ga. 195, 304 S.E.2d 389 (1983) (jurisdiction exercised to interpret church bylaws concerning authority to terminate pastor's employment); *Reardon v. Lemoyne,* 122 N.H. 1042, 454 A.2d 428 (1982) (jurisdiction exercised over contract dispute between nuns and parochial school district which had discharged them as teachers); *Gervin v. Reddick,* 246 Ga. 56, 268 S.E.2d 657 (1980) (jurisdiction exercised to determine authority of Baptist church's pastor and members of Board of Deacons to govern church affairs and spend church funds in light of challenge by members of congregation); *Abyssinia Missionary Baptist*

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[16]Moreover, although the Court of Appeals expressly acknowledged that the majority vote of the messengers is the ultimate decision-making authority within the SBC (see 828 F.2d at 720, n.8 (App. 31)), the Court of Appeals did *not* explain why it did not "defer" to the majority vote of the messengers to consider the amendment to the nominating report.

Church v. Nixon, 340 So.2d 746 (Ala. 1976) (jurisdiction exercised in action challenging expulsion of church members and seeking accounting of expenditures of church funds); *Baugh v. Thomas,* 56 N.J. 203, 265 A.2d 675 (1970) (jurisdiction exercised in action challenging compliance with church rules in expulsion of congregation member).

A. Georgia Cases

Most notable is the failure of the lower courts to follow, or even seriously acknowledge, decisions of the Supreme Court of Georgia, whose substantive law governs this case. The Georgia courts have adopted and continued to develop the neutral principles analysis in response to the Court's decision in *Hull Church. See Presbyterian Church in the United States v. Eastern Heights Church,* 225 Ga. 259, 167 S.E.2d 658 (1969), *cert. denied,* 396 U.S. 1041 (1970) (adopting neutral principles analysis). The lower courts effectively ignored the fact that the Georgia courts (as well as the highest courts of several other states) have repeatedly exercised jurisdiction over precisely the sort of dispute presented by the instant case—namely, a dispute over the procedural regularity of actions taken in a congregational church.

In *Reddick v. Jones, supra,* the Georgia Supreme Court relied expressly on the "neutral principles" approach of *Jones v. Wolf* to adjudicate an "internal church affair" closely akin to this case. *Reddick* involved a challenge to the discharge of the pastor of a Baptist church. The pastor had been discharged at a special meeting of the church's board of directors. The pastor and four members of the church loyal to him sought an injunction to prevent alleged interference with the pastor's rights to the benefits of his office and the wasting of the church's assets.

The Georgia Supreme Court looked to the bylaws of the church, a non-profit corporation, to determine that the right to terminate a pastor's employment was reserved to the general membership of the congregation and that the board of directors of the non-profit corporation held no authority to discharge the pastor. The *Reddick* court specifically relied on *Jones v. Wolf* for the principle that neutral statutes, corporate charters, relevant deeds and the organizational constitutions of the denomination may be relied upon in the resolution of intrachurch disputes. 251 Ga. at 196, 304 S.E.2d at 391.

In another post-*Jones* decision, *Gervin v. Reddick*, 246 Ga. 56, 268 S.E.2d 657 (1980), the Supreme Court of Georgia held that a Baptist church's pastor and certain members of its Board of Deacons had no authority to appoint a treasurer after the majority of the congregation had voted against his appointment. The *Gervin* court rejected an argument that the First Amendment precluded the exercise of jurisdiction, holding that it could properly adjudicate the procedural issues to prevent seizure of the management of the church and its assets by those without authority to serve. 246 Ga. at 57-58, 268 S.E.2d at 658.[17]

Although the Court of Appeals evaded any discussion of the Georgia authorities,[18] it is clear that it closes the

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[17]The decisions in *Reddick* and *Gervin* followed and expanded upon a long line of Georgia Supreme Court decisions applying church bylaws and constitutional provisions in the resolution of intrachurch disputes. *See* n. 4, *supra*.

[18]"We do not, of course, express an opinion as to whether appellants are correct in arguing that this conclusion overrules several decisions of the Georgia courts. It is sufficient to point out that Georgia courts are powerless to adjudicate religious disputes where doing so violates the United States Constitution." 828 F.2d at 727, n.21 (App. 32).

doors of federal and state courts in Georgia to a category of disputes over which they have long exercised jurisdiction.

B. Other State Court Decisions

The highest courts of several other states have also applied the neutral principles approach in rejecting First Amendment defenses to actions against religious entities. These cases reveal that numerous state courts of last resort have interpreted *Jones* and this Court's other decisions to permit the adjudication of disputes indistinguishable from the one involved in the instant case.

In *Reid v. Gholson, supra,* for example, the Supreme Court of Virginia was confronted with the issue of whether the trial court had jurisdiction to deal with procedural irregularities occurring in business meetings and elections held by a Baptist church. The irregularities included the "silencing" of individuals opposed to the policies of the pastor and his adherents, and questions concerning the validity of absentee or proxy ballots produced by the minister and his adherents at a church election. In rejecting a claim by the pastor's adherents that any judicial inquiry into "church governance" was prohibited by the First Amendment, the *Reid* court relied on *Jones* in holding that "where church property and civil rights disputes can be decided without reference to questions of faith and doctrine, there is no constitutional prohibition against their resolution by the civil courts." 229 Va. at 189-90, 327 S.E.2d at 112. The court went on to conclude that there were neutral principles of law "applicable not only to religious bodies, but to public and private lay organizations and to civil governments as well. Courts must apply them every day, and can do so without any danger of entering

into a 'religious thicket.'" 229 Va. at 187, 327 S.E.2d 113.

The Supreme Court of New Hampshire also relied on *Jones* in concluding that the First Amendment did not prohibit the exercise of jurisdiction in an action by Roman Catholic nuns who had been discharged as parochial school teachers against the school system, its superintendent, and the local Bishop. *Reardon v. Lemoyne*, 122 N.H. 1042, 454 A.2d 428 (1982). The *Reardon* court concluded that the exercise of jurisdiction was not prohibited where all that was involved was the non-doctrinal interpretation of the plaintiffs' contractual rights. As the court held, relying upon *Jones*:

> Religious entities, however, are not totally immune from responsibility under the civil law. In religious controversies involving property or contractual rights outside the doctrinal realm, a court may accept jurisdiction and render a decision without violating the first amendment.

122 N.H. at 1047, 454 A.2d at 431.

The *Reardon* court further concluded that,

> civil courts are permitted to consider the validity of non-doctrinal contractual claims which are raised by parties to contracts with religious entities. This requires the courts to evaluate the pertinent contractual provisions and extrinsic evidence in cases of ambiguity, to determine whether any violations of the contract have occurred, and to order appropriate remedies, if necessary.

122 N.H. at 1048, 454 A.2d at 432.[19]

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[19]Other state courts of last resort have also concluded that the First Amendment does not prohibit the resolution of intra-church disputes raising non-doctrinal questions of church gov-

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If the Court of Appeals' interpretation of the First Amendment is correct, the unavoidable conclusion is that the Georgia courts and many other state courts of last resort have grossly misconstrued and regularly exceeded the bounds of the First Amendment. At the very least, the conflict between the Court of Appeals' decision and these state court decisions indicates that the Court's decisions in *Jones* and *Milivojevich* have generated considerable confusion, which this Court should take the opportunity to clarify.

III. This Case Presents An Important First Amendment Question That Should Be Addressed By This Court.

A. The Role of "Real Property" Rights In The Constitutional Analysis

The Court of Appeals held that "the state's interest in providing a civil court forum for ecclesiastical disputes

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erance. *See Abyssinia Missionary Baptist Church v. Nixon, supra; Baugh v. Thomas, supra.* The same is true of a number of state trial and intermediate courts. *See, e.g., Smith v. Riley,* 424 So.2d 1166 (La. Ct. App. 1982) (holding trial court had authority to determine whether church board of trustees was legally constituted and to issue orders necessary to enforce church's compliance with its own articles of incorporation); *Zimbler v. Felber,* 111 Misc. 2d 867, 445 N.Y.S.2d 366 (1981) (finding that trustees of Jewish nonprofit corporation had violated members' voting rights under constitution); *Waters v. Hargest,* 593 S.W.2d 364 (Tex. Civ. App. 1979) (jurisdiction existed to review suit by members of Baptist church against pastor, deacons and trustees to compel them to hold meeting for vote on retention of pastor). *Cf. Organization For Preserving Constitution of Zion Lutheran Church of Auburn v. Mason,* 49 Wash. App. 441, 743 P.2d 848 (Wash. 1987) (in case involving disputed interpretations of church constitutional provision regarding election of pastor, court concluded that Washington had adopted deferential, rather than neutral principles approach and remanded for determination whether church was organized along congregational or hierarchical lines).

is substantially diminished where the controversy does not concern formal title to property." 828 F.2d at 725-26 (App. 29).[20] This Court should decide whether the First Amendment provides greater latitude for adjudication and protection of real property rights than for the adjudication and protection of such intangible personal property rights as those reflected in a church's corporate bylaws.[21]

Georgia, and other states (*See* Section II, *supra*), have clearly opened their courts to intrachurch disputes that do not involve formal title to real property. Thus these states have determined that there is a strong state interest in providing a judicial forum for the peaceful resolution of such intrachurch disputes and that the scope of the First Amendment's restrictions does not vary with the commercial value of the right being litigated (real property rights versus tangible or intangible personal property rights). This Court should grant a writ of certiorari to determine whether the type of right being litigated has the constitutional significance attributed to it by the Court of Appeals.

B. The First Amendment As A "Handmaiden Of Arbitrary Lawlessness"

The Court of Appeals' decision effectively closes the doors of the state and federal courts to disputes over all matters of "church governance," even where no doctrinal question is involved and no matter how clear and egregious

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[20]As noted above, the Court of Appeals' reliance on *Milivojevich* as authority for this proposition is misplaced.

[21]Although the Court of Appeals acknowledged that under Georgia law corporate bylaws create enforceable contract rights, it held that "denial of these alleged rights is unrelated to any question of ownership of property that would give rise to a state interest in assuring prompt resolution of the controversy by a civil court forum." 828 F.2d at 727 (App. 31-32).

the violation of the church's rules of government.[22] Thus, the decision below removes a large category of disputes from all courts and affects all religious entities.

This Court should determine whether the First Amendment should be converted from a shield into the sword that the Court of Appeals' decision has made it. In the name of protecting from governmental interference the autonomy and free exercise rights of religious *entities*, the Court of Appeals has trounced the free exercise rights of the individual members, from whom any rights of the entity arise, by refusing to enforce the parties' intent as expressed in the unambiguous church rules they have freely adopted. The decision below effectively holds that the free exercise rights of the religious body includes not merely the right to freely choose its own rules of governance, but also the right to violate them with impunity. In thus denying enforcement of the compact among church members as to how they will govern themselves, the decision below also offends fundamental notions of justice.

This Court should decide whether the First Amendment must become a "handmaiden of arbitrary lawlessness" that leaves the members of religious bodies unable to peacefully resolve matters of governance that do not require decisions about questions of doctrine or belief.

C. The Impact On The Nation's Largest Protestant Denomination

Because the Court of Appeals' decision ousts all state and federal courts of jurisdiction over such intrachurch

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[22] See *Milivojevich*, 426 U.S. at 727 (Rehnquist & Stevens, JJ., dissenting) (suggesting that courts must be able to adjudicate, for example, challenge to church action taken on vote at meeting attended by less than quorum prescribed by church rules if courts are to avoid being "handmaidens of arbitrary lawlessness").

disputes, it affects all religious organizations. The specific impact on the SBC demonstrates how far-reaching the consequences of that decision are. The SBC is the largest Protestant denomination in the United States. There are more than 14,000,000 Southern Baptists, and the SBC has over $2 billion in assets and has an annual budget of over $200 million. Southern Baptists have deliberately incorporated under state law, and have chosen a congregational system of government that is reflected in the SBC's Constitution and corporate bylaws, under which ultimate decision-making authority is vested in a majority vote of the messengers. By denying enforcement of the SBC's bylaws providing for majority rule under neutral principles of law, the Court of Appeals' decision has permitted the democratic system of government selected by the messengers to govern the SBC's affairs to be overruled by the arbitrary actions of its presiding officer. Far from encouraging the adoption of rules of self-governance, the Court of Appeals' decision makes those rules a nullity and makes it futile for religious organizations to structure themselves in a "legally cognizable form" as specifically endorsed in *Hull Church* and *Wolf*.

Respectfully submitted,

EMMET J. BONDURANT
JANE F. VEHKO
JOHN E. FLOYD
Attorneys of Record

OF COUNSEL:
BONDURANT, MIXSON & ELMORE
2200 First Atlanta Tower
Two Peachtree Street, N.W.
Atlanta, Georgia 30383-4501
(404) 581-5200

Robert S. CROWDER, Julia-K. Crowder, and Henry C. Cooper, Plaintiffs,

v.

SOUTHERN BAPTIST CONVENTION, and Executive Committee of the Southern Baptist Convention, Defendants.

Civ. A. No. C85-4582A.

United States District Court, N.D. Georgia, Atlanta Division.

May 5, 1986.

Proceeding was instituted on motion for summary judgment to dismiss action for declaratory and injunctive relief. The District Court, Robert H. Hall, J., held that action wherein elected and registered messengers of church sought a declaratory judgment on interpretation of certain bylaws and an injunction against church convention and executive committee compelling compliance with such interpretations involved questions of internal church affairs and governance rather than application of neutral principles of law and, notwithstanding characterization of action as involving a mere secular interpretation of Roberts Rules of Order, involved an ecclesiastical controversy as to which federal court lacked jurisdiction under principle of separation of church and state.

Motion denied.

Jane F. Vehko, Bondurant, Mixson & Elmore, Atlanta, Ga., for plaintiffs.

James P. Guenther, Nashville, Tenn., Griffin B. Bell, King & Spalding, Atlanta, Ga., for defendants.

ORDER

ROBERT H. HALL, District Judge.

This action is presently before the court on numerous motions by the parties; the motions of primary importance are defendants' motion for summary judgment based on certain jurisdictional grounds and plaintiffs' motion for summary judgment on the merits. The court GRANTS defendants' motion for summary judgment, thereby rendering plaintiffs' motion for summary judgment and all other pending motions moot.

FACTUAL BACKGROUND

This is an action seeking declaratory and injunctive relief against the Southern Baptist Convention (the "SBC" or the "Convention") and the Executive Committee of the Southern Baptist Convention (the "Executive Committee"). The plaintiffs were duly elected and registered messengers to the 1985 annual meeting of the SBC held in Dallas, Texas from June 11 to June 18, 1985. They have also been selected as messengers to the 1986 Convention, to be held June 10-12, 1986, in Atlanta, Georgia. Plaintiffs contend that certain rulings by the President and Chair of the Convention, Reverend Dr. Charles Stanley, violated the SBC's bylaws, because they violated certain provisions of *Robert's Rules of Order,* which is specifically incorporated into the SBC bylaws, through bylaw 11. The specific facts underlying the present dispute are summarized below.

The Southern Baptist Convention is a religious body, incorporated and created "for the purpose of eliciting, combining, and directing the energies of the Baptist de-

nomination of Christians, [and] for the propagation of the gospel. . . .'' The Convention comes into being in a corporeal sense for three days each year when that year's duly elected and registered messengers convene for an annual meeting to conduct the Convention's business. This business for any given year includes the election of Convention officers (*e.g.*, president, first vice-president, etc.), as well as the election of persons to fill positions on various committees. In each year, the messengers are those members of cooperating missionary Baptist churches who have been elected by their respective churches as messengers to the Convention.

Plaintiffs were three of some 45,000 Baptist messengers who convened in Dallas, Texas in June 1985 for the 1985 Convention. At that meeting a committee called the ''Committee on Boards, Commissions, and Standing Committees'' (the ''1985 Nominating Committee'') was elected by a majority of the registered messengers present and voting. This committee is responsible for identifying vacancies within the trusteeships of the various theological seminaries, missionary agencies, and other agencies associated with the SBC. In addition to identifying the vacancies, this committee has the task of nominating persons to fill those vacancies to be voted on by the messengers to the 1986 Convention.

Plaintiffs contend that certain bylaws were misinterpreted and that certain parlimentary errors occurred during the process of electing the 1985 Nominating Committee. To understand plaintiffs' contentions the particular events surrounding the election of the 1985 Nominating Committee must be described.

On June 12, 1985, during the 1985 Convention, the Committee on Committees submitted its slate of candidates for the Nominating Committee. Before that slate was voted on by the messengers, a motion was made by one of the messengers, Messenger Slatton, to substitute a new and different slate of candidates. The Convention Chair, Reverend Dr. Charles Stanley, ruled Messenger Slatton's motion out of order. The basis for Reverend Dr. Stanley's ruling was that the nominating report could be amended only on an individual-by-individual basis, as opposed to by slate. Plaintiffs contend that Reverend Dr. Stanley's ruling was incorrect and was in violation of several bylaws. This ruling was appealed to the floor of the Convention where the majority of the registered messengers present and voting voted to overrule the Chair's ruling. The morning session was then closed. When the evening session convened, Reverend Dr. Stanley again ruled Dr. Slatton's motion out of order, this time on the ground that nominations from the floor of the Convention in any form (whether by individual or by slate) were prohibited by the bylaws. Plaintiffs contend that they attempted to appeal this ruling but that they were not recognized by the Chair. The slate of candidates proposed by the Committee on Committees was elected by a majority of the messengers as the 1985 Nominating Committee.

Plaintiffs Robert and Julia Crowder petitioned the Executive Committee to use its powers to correct the allegedly erroneous ruling made at the 1985 Convention. The Executive Committee affirmed the election of the 1985 Nominating Committee. Plaintiffs then instituted this action, seeking a declaratory judgment on the interpretation of certain bylaws; an injunction compelling compliance

with such interpretations; and an injunction prohibiting the members of the 1985 Nominating Committee from continuing to serve. Further facts will be disclosed as necessary for the discussion of the pending motions.

DISCUSSION

Defendants have moved to dismiss this action on two grounds. First, defendants contend that plaintiffs' claims do not satisfy the amount-in-controversy requirement established by 28 U.S.C. § 1332 (West Supp.1985). Second, defendants contend that the First Amendment of the United States Constitution precludes this court from entertaining and/or resolving this controversy. Because defendants relied on matters outside the pleadings this court converted the motion to dismiss into a motion for summary judgment by Order dated February 12, 1986. The court will first consider defendants' argument regarding the First Amendment.

First Amendment Concerns

Defendants contend that this court lacks jurisdiction over this action because it involves the resolution of an ecclesiastical controversy in violation of the First Amendment's requirement of separation of church and state. This court agrees with defendants.

It has long been a fundamental proposition of constitutional law that civil tribunals have no power to resolve disputes which are ecclesiastical in nature. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hill Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969); *Watson v. Jones*,

80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871). In an attempt to avoid this limitation on the court's power, plaintiffs contend that this dispute can be decided by this tribunal because it can be resolved through the application of neutral principles of law. According to plaintiffs, this is true because this case does not involve a question of Baptist doctrine or Christian religious belief, but instead involves only an interpretation of *Roberts Rules of Order* which, in plaintiffs' words, is "as secular as the Constitution or the Civil Rights Act." (Plaintiffs' Brief in Support of Summary Judgment, p. 47). The court disagrees with plaintiffs for the following reasons. First, the court finds that the doctrine of neutral principles of law is not relevant in deciding whether a court can resolve a dispute, but is only applicable as a method of resolving a dispute over which a court has already determined it has jurisdiction. The issue, therefore, is whether this court can decide the dispute before it; in this regard the court rejects, as an oversimplification, plaintiffs' characterization of the present dispute. The court will now expand on its reasoning.

In concluding that the present dispute can be decided by this court simply because it is possible to resolve it by neutral principles of law plaintiffs rely heavily on *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). *Jones* involved a dispute over the ownership of Church property in Macon, Georgia, following a schism within the local church. The Georgia Supreme Court affirmed the trial court's application of Georgia's "neutral principles of law" approach to church property disputes through which the trial court granted judgment to the majority group.

In reviewing the case the first question before the Supreme Court was whether a civil tribunal can resolve a dis-

pute over the ownership of church property. In this regard the court concluded that "[t]here can be little doubt about the general authority of civil courts to resolve this question." *Id.* at 602, 99 S.Ct. at 3024.[1] In reaching this conclusion the court did not cite neutral principles at all because neutral principles are not relevant to whether a court can decide a particular dispute. Once the Supreme Court had decided that a civil court could exercise jurisdiction over this church dispute it then turned to the second question before it—whether the neutral principles of law approach used by Georgia courts was a proper method of resolving such a dispute. The court concluded that Georgia's approach was constitutionally permissible. This court does not read *Jones* as holding that all church-related disputes can be decided by civil courts if the process takes place by the application of neutral principles. In all cases a court must still decide, as an initial matter, whether the particular dispute is one which the court may decide.

To determine whether this court may, constitutionally, resolve the present dispute the court must decide the exact nature of this dispute. Plaintiffs characterize the dispute

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1. The ability of a civil court to resolve disputes regarding the ownership of church property stems from the state's "obvious and legitimate interest in the peaceful resolution of property disputes." *Jones*, 443 U.S. at 602, 99 S.Ct. at 3025. In an attempt to come within this narrow exception to the general rule that civil courts lack jurisdiction of church disputes, plaintiffs allege that they have "a protectable property interest in insuring that officials within the organization are properly elected under the by-laws." (Plaintiffs' Brief in Support of Summary Judgment, p. 19). This is not the type of property dispute contemplated by *Jones* or the numerous Georgia cases cited by plaintiffs. *See e.g., Edwards v. Thomas*, 204 Ga. 766, 51 S.E.2d 855 (1949) and *Knowles v. White*, 199 Ga. 772, 35 S.E.2d 451 (1945).

as a breach of contract, the contract being the SBC bylaws which defendants allegedly breached through an incorrect interpretation of *Robert's Rules of Order*. As stated earlier, the court views this characterization as an oversimplification of the dispute. What is actually at issue in this case is a question of church governance. Whether Reverend Dr. Stanley's rulings were correct or patently incorrect is irrelevant because a decision as to validity of his rulings would involve this court in the internal affairs of the Southern Baptist Convention, a position the court cannot assume.

The fact that a civil court must not become involved in disputes of this type has been made abundently clear by the Supreme Court. In *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871) the Court considered a controversy over which of two groups of persons were the ruling elders of a hierarchical church. In this case the court established the lasting limitations on a civil tribunal's power to resolve such disputes:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All that unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them redressed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions

> be binding in all cases of ecclesiastical cognizance, subject only to such appeals as to the organism itself provides for.
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> . . . "[T]he judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they became members they did so upon the condition of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals."

Id. 80 U.S. at 728-31 (citation omitted).

This limitation was recently reaffirmed in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). In *Serbian*, the hierarchical Mother Church had removed and defrocked a bishop. In addition, the Mother Church changed the internal administration of its American Diocese and reorganized it into three separate dioceses. The bishop sued claiming that "the proceedings of the Mother Church . . . were procedurally and substantively defective under the internal regulations of the Mother Church and were therefore arbitrary and invalid." *Id.* at 698, 96 S.Ct. at 2375. The bishop claimed that he was the true Bishop of the American Diocese, and that, as holder of that ecclesiastical office, he controlled certain property in dispute. The Supreme Court of Illinois ruled in favor of the bishop, but the Supreme Court of the United States reversed on grounds that the state court's determination was based on inquiries "into matters of ecclessiastical cognizance and polity" in violation of the First Amendment. *Id.*

In reaching its decision in *Serbian* the Supreme Court noted that the Illinois Supreme Court had invalidated the decision to defrock the bishop on the ground that it was "arbitrary" because a detailed review of the evidence disclosed that the proceedings resulting in [the bishop's] removal and defrockment were not in accordance with the prescribed procedure of the constitution and the penal code of the Serbian Orthodox Church. The Supreme Court held that "[n]ot only was this 'detailed review' impermissible under the First and Fourteenth Amendments, but in reaching this conclusion, the court evaluated conflicting testimony concerning internal church procedures and rejected the interpretations of relevant procedural provisions of the Mother Church's tribunals." *Serbian*, 426 U.S. at 718, 96 S.Ct. at 2384. This is the exact type of inquiry plaintiffs would have this court undertake, and one which is clearly impermissible.

For these reasons the court holds that this dispute is one involving questions of internal church affairs and governance over which this court has no jurisdiction. Accordingly, the court GRANTS defendants' motion for summary judgment on this ground. Having ruled in this manner the court does not reach defendants' arguments concerning the amount in controversy.

In summary, the court GRANTS defendants' motion for summary judgment. All other pending motions are rendered moot by this decision. This decision terminates this case.

Robert S. CROWDER, Julia J. Crowder
and Henry C. Cooper,
Plaintiffs-Appellants,

H. Allan McCartney, Intervenor,

v.

SOUTHERN BAPTIST CONVENTION
and Executive Committee of the Southern Baptist
Convention, Defendants-Appellees.

No. 86-8386.

United States Court of Appeals,
Eleventh Circuit.

Sept. 28, 1987.

Action was brought challenging parliamentary ruling made by chairman at church convention. The United States District Court for the Northern District of Georgia, No. C85-4582A, Robert H. Hall, J., 637 F.Supp. 478, granted church's motion for summary judgment, and plaintiffs appealed. The Court of Appeals, Kravitch, Circuit Judge, held that First Amendment precluded court from resolving controversy.

Affirmed.

Edmondson, Circuit Judge, filed a concurring opinion.

Jane F. Vehko, Atlanta, Ga., for plaintiffs-appellants.

James P. Guenther, Guenther & Jordan, Nashville, Tenn., Perry E. Pearce, King & Spalding, Griffin B. Bell, Richard A. Schneider, J. Warren Ott, Atlanta, Ga. for defendants-appellees.

Appeal from the United States District Court for the Northern District of Georgia.

Before KRAVITCH and EDMONDSON, Circuit Judges, and TUTTLE, Senior Circuit Judge.

KRAVITCH, Circuit Judge:

Among the separation of church and state principles required by the establishment and free exercise clauses of the first amendment is that courts may not adjudicate ecclesiastical disputes. In this case we examine the contours of this prohibition in deciding whether the district court erred in concluding that it could not, consistent with the first amendment, adjudicate a dispute concerning a parliamentary ruling at the 1985 Southern Baptist Convention.

I

In June 1985, more than 45,000 baptists who had been elected as "messengers" by their local congregations converged in Dallas, Texas, for the 1985 Southern Baptist Convention[1] (1985 Convention). Among the business at the 1985 Convention was the election of members to the Committee on Boards, Commissions, and Standing Committees (Committee on Boards); the body responsible for

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1. The Southern Baptist Convention was incorporated by a special act of the Georgia legislature in 1845 "for the purpose of eliciting, combining and directing the energies of the Baptist denominations of Christians, for the propagation of the gospel, any law, usage, or custom to the contrary notwithstanding." Article II of the SBC constitution provides that:

> It is the purpose of the Convention to provide a general organization for Baptists in the United States and its territories for the promotion of Christian missions at home and abroad and any other objects such as Christian education, benevolent enterprises, and social services which it may deem proper and advisable for the furtherance of the Kingdom of God.

nominating members to the various Southern Baptist Convention (SBC) institutions that administer the SBC's assets and annual budget.

In accordance with SBC's bylaws,[2] the SBC Committee on Committees submitted a slate of nominations for the Committee on Boards for consideration by the floor of the 1985 Convention. When SBC President and 1985 Convention Chairman Dr. Charles Stanley opened the floor for discussion of the nominations, Messenger Slatton moved to "amend" the Committee on Committees' slate of nominations by substituting a new slate of candidates. Chairman Stanley ruled that Messenger Slatton could not offer an entire slate of candidates at once and that he would have to move to amend the Committee's nominations one by one by referring to specific individuals. When he realized that this ruling would greatly impair his ability to present the reasons supporting the substitution of a new slate of candidates,[3] Messenger Slatton appealed the

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2. SBC bylaw sixteen stated that members to the Committee on Boards "shall be nominated to the Convention by the Committee on Committees."

3. Messenger Slatton moved to substitute leaders of the participating state baptist conventions to serve on the Committee on Boards. The following dialogue illustrates the effect of the chair's ruling on Messenger Slatton's motion:

> Messenger Slatton: [W]e have within our reach today to do something substantive that will put the Convention back on the road to peace. And that is to put in these positions persons who have passed plebiscites in their individual states. I say this with no prejudice toward the report of the Committee or toward the persons nominated by the Committee. But the trust level is significantly higher in those who have been elected in the local states. It's utterly inappropriate to come to this—

(Continued on following page)

chair's ruling to the floor of the convention. The messengers voted to overrule the chair and allow the floor to vote for all of Messenger Slatton's nominees at one time. The 1985 Convention then adjourned until the evening session.

When the evening session convened, Chairman Stanley ruled that Messenger Slatton's motion was out of order because SBC bylaw sixteen states that members to the Committee on Boards "shall be nominated to the Convention by the Committee on Committees." The 1985 Convention parliamentarian explained that this bylaw does not permit *any* motion from the floor of the convention to

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(Continued from previous page)

Chairman Stanley: You need to talk about the person, and not the whole philosophy.

Messenger Slatton: All right.

Chairman Stanley: If you'd just—

Messenger Slatton: I've already said I didn't come here to make accusations against anybody or to argue the superior merits of anyone, other than the superior merits of the Plan.

And so, in the interests of the Plan, I nominate, first of all, the lady I mentioned, Carolyn Miller, in place of Jane Riley Wiggins.

Chairman Stanley: All right. To speak to this motion is Al Jackson.

Messenger Jackson: I'm Al Jackson, Messenger from Lakeview Baptist Church in Allren. I placed in nomination the name of Jane Riley Wiggins to serve on the Committee on Boards. She's a very godly lady. She's served in almost every capacity in the life of her church. . . . She's served as Sunday School teacher, V.B.S. teacher, a member of the Missions Committee, the Budget Committee, the Nominating Committee. She's been on mission trips. She's served as the president of the W.M.U. in the church, church training teacher, youth worker, choir member. She and her family are some of the most generous, loyal, supportive Southern Baptists that I know.

amend the list of nominations received from the Committee on Committees because the word "shall" indicates that the Committee on Committees is exclusively responsible for such nominations. Chairman Stanley then refused to recognize several messengers attempting to raise points of order, and called for a vote on the Committee on Committees' nominations. The nominations were approved by a majority of messengers.

Appellants Robert S. Crowder, Sr., Julia J. Crowder, H. Allan McCartney and Henry C. Cooper were duly certified and registered messengers to the 1985 Convention. Appellants Robert and Julia Crowder petitioned the SBC Executive Committee both in writing and in person through counsel to urge the Executive Committee to use its "ad interim" authority[4] to correct Chairman Stanley's allegedly erroneous rulings and to take appropriate action with respect to the Committee on Boards. The Executive Committee considered appellants' petition and affirmed the election of the Committee on Boards because "[w]hatever mistakes might have occurred in Dallas with reference to interpretation of the bylaws is history. To seek to re-do or un-do an action of the Southern Baptist Convention will accomplish no positive good." The Executive Committee adopted the recommendations of the Executive Committee Bylaws Workgroup indicating, *inter alia*: (1) that messengers control the SBC within the SBC's procedures; (2) that the messengers at the 1985 Convention elected the nominees of the Committee on Committees;

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4. Under SBC bylaw 20(5)(a), the Executive Committee is empowered to "act for the Convention ad interim in all matters not otherwise provided for."

(3) that the Committee on Committee's nominees for the Committee on Boards would, in the opinion of the Executive Committee, have been elected even if the nominees offered from the floor had been voted upon; (4) that messengers to the 1986 Convention will have an opportunity to erase any influence of the Committee on Boards elected at the 1985 Convention by rejecting the committee's nominations from the floor of the 1986 Convention; and (5) that the polity of the SBC gives the Executive Committee the power to render moot any procedural defects in the election of the Committee on Boards at the 1985 Convention by affirming the election.[5]

The Crowder appellants and appellant Cooper then brought this diversity action against appellees,[6] the Southern Baptist Convention and the Executive Committee of the Southern Baptist Convention. Appellants sought a declaration as to the proper construction of the bylaws in question;[7] a declaration that Chairman Stanley's rulings

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5. The record is unclear as to whether the Excutive Committee's "ad interim" power might enable it to unseat the members of the Committee on Boards elected at the 1985 Convention.

6. Appellant H. Allan McCartney was granted permission to intervene under Fed.R.Civ.P. 24(b).

7. Appellants sought a declaration: (1) that bylaw 16 allowed any registered messenger to propose amendments from the floor of the convention to offer either individual candidates or a slate of candidates for the Committee on Boards as an amendment to the report of the Committee on Committees; (2) that bylaw 32 gives the floor of the convention the right to amend the body of any report, including the Committee on Committees' nominations for the Committee on Boards; and (3) that bylaw 35 grants majority vote control to the messengers and binds the chair to such a vote on matters of parliamentary procedure.

were invalid;[8] and a declaration that the members of the Committee on Boards selected at the 1985 Convention were without authority to serve in that capacity.[9] In addition, appellants sought to enjoin appellees from violating the declaratory judgments and from permitting the members of the Committee on Boards elected at the 1985 Convention from serving in that capacity.

Appellees filed a motion to dismiss alleging that the federal court lacked jurisdiction due to insufficiency of the amount in controversy, 28 U.S.C. § 1332(a), and that the court's exercise of jurisdiction over the controversy would violate the First Amendment.[10] The district court converted appellees' motion to dismiss into a motion for summary judgment because appellees relied upon matters outside of the pleadings, see Fed.R.Civ.P. 12(b); it denied

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8. Appellants contended that Chairman Stanley violated SBC bylaw 32 when he overruled the vote of a majority of the messengers at the 1985 Convention to permit Messenger Slatton's motion to amend the slate of nominees submitted by the Committee on Committees. Bylaw 32 reserves to the Convention "the right to consider and amend the body of all reports." Bylaw 35 leaves little doubt as to the authority of a vote by a majority of the messengers: "[a]ll propositions, decisions, and choices shall be by a majority vote of the registered messengers present and voting, except where provisions have been made for a greater than majority vote." Moreover, by refusing to recognize repeated attempts to raise points of order, appellants allege that Chairman Stanley violated bylaw 11 that makes *Roberts Rules of Order* the parliamentary authority of the SBC. Finally, appellants alleged that Chairman Stanley violated bylaw 16 by refusing to permit any amendments to the Committee on Committees' nominations to the Committee on Boards.

9. The SBC has convened twice during the pendency of this lawsuit.

10. Appellees also sought to limit all further proceedings in the case until the motion to dismiss was resolved.

appellees' motion for a stay of proceedings because the amount in controversy and first amendment issues were intertwined with the merits. Appellants then moved for summary judgment and responded to appellees' motion for summary judgment.

The district court granted summary judgment for appellees on first amendment grounds and denied all other pending motions as moot. The court reasoned that the preliminary consideration in determining whether judicial resolution of the controversy would violate the fundamental proposition of constitutional law that civil tribunals have no power to resolve disputes which are ecclesiastical in nature is to determine the exact nature of the dispute. Only then may a court decide whether the case may be resolved by resort to the "neutral principles of law" method described in *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). Applying this analysis, the court concluded that "[w]hether Reverend Dr. Stanley's rulings were correct or patently incorrect is irrelevant because a decision as to validity of his rulings would involve this court in the internal affairs of the Southern Baptist Convention, a position the court cannot assume."

II

The prohibition on judicial cognizance of ecclesiastical disputes is founded upon both establishment and free exercise clause concerns. By adjudicating religious disputes, civil courts risk affecting associational conduct and thereby chilling the free exercise of religious beliefs. Moreover, by entering into a religious controversy and putting the enforcement power of the state behind a particular religious faction, a civil court risks "establishing" a religion.

The Supreme Court described the interplay of these establishment and free exercise concerns in *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 222, 83 S.Ct. 1560, 1571, 10 L.Ed.2d 844 (1963):

> The wholesome [government] "neutrality" of which this Court's cases speak . . . stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodixies. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes . . . the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees.

Nevertheless, the Court has also rejected an absolute rule that civil courts are powerless to resolve any church property dispute. *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 21 L.Ed. 69 (1872); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969); *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). Thus, Supreme Court decisions have attempted to strike an appropriate balance between the establishment and free exercise concerns implicated when a court is asked to resolve an ecclesiastical dispute, and the interests of the state and the aggrieved party in resolution of the controversy by a court of law. A review of the Court's decisions articulating the factors to be considered in achieving this balance is therefore necessary to the resolution of this case.

The Court has recognized two primary first amendment interests that favor judicial noninvolvement in an ecclesiastical dispute. The first of these first amendment concerns is the extent to which judicial resolution of the particular controversy would involve deciding issues of religious doctrine or beliefs. In *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1872), for example, the Court found that the first amendment barred judicial resolution of a controversy over which of two factions within the church should be recognized as the "true" Walnut Street Presbyterian Church of Louisville. The Court reasoned that, although courts could resolve certain types of property disputes and set aside any punishment for crimes imposed by ecclestiastical tribunals:

> [I]t is a very different thing where a subject-matter of dispute, strictly and purely ecclesiastical in its character—a matter over which civil courts exercise no jurisdiction—a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them—becomes the subject of [an] action. . . . [I]t is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court.

Id. at 733, 20 L.Ed. 666.

Subsequent decisions have refined this analysis by identifying methods by which courts might resolve church property disputes without deciding questions of religious

belief or doctrine. The Court's decisions in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969) (*Hull Church*), and *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), recognized that where the method of resolution of the controversy avoids excessively entangling[11] the judiciary in questions of ecclesastical doctrine or belief, the first amendment might permit a court to adjudicate the matter.

Hull Church concerned a dispute between the Presbyterian Church in the United States (general church) and two local churches over control of the properties used by the local churches. The local churches had renounced the general church's jurisdiction and authority over them because they believed that the general church had violated its own constitution and had departed from its doctrine in force at the time the local churches became affiliated

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11. The Court's *Hull Church* decision suggests that the establishment clause based prohibition against excessive government entanglement with religion is implicated where the method of dispute resolution involves an inquiry into religious beliefs or doctrines. It is now well settled that even where the government's action is not aimed at establishing, sponsoring, or supporting religion, the government action still violates the establishment clause if the end result of the action is an excessive government entanglement with religion. *Walz v. Tax Commission of New York*, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970); *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). The continued vitality of this "third prong" of the *Lemon* test has been reaffirmed by the Court in its most recent term. *See Edwards v. Aquillard*, — U.S. —, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987); *Hobbie v. Unemployment Appeals Comm.*, — U.S. —, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987). Of course, as discussed *supra*, excessive government entanglement in this context also may affect associational conduct and thereby chill the free exercise of religious beliefs.

with the general church. Georgia law at the time implied a trust in favor of the general church as long as the general church's actions did not "amount to a fundamental or substantial abandonment of the original tenets and doctrines of the [general church], so that the new tenets and doctrines are utterly variant from the purposes for which the [general church] was founded." *Hull Church*, 393 U.S. at 443-44, 89 S.Ct. at 603. The Georgia courts therefore enjoined the general church from asserting a right to the local church property because a jury found that the implied trust had terminated due to the general church's departure from its doctrine.

The Supreme Court held that Georgia's "departure-from-doctrine" analysis violated the first amendment because it required judicial resolution of matters of religious belief and doctrine. The Court indicated that:

> [T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. . . . the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.

Id. at 449, 89 S.Ct. at 606.

In response to *Hull Church's* invalidation of the "departure-from-doctrine" method of resolving church property disputes, Georgia courts adopted a "neutral principles of law" approach[12] that the *Hull Church* Court, in the passage quoted above, suggested might be valid. The Supreme Court expressly approved of this new method in *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979),[13] where the Court found that the neutral principles approach was not "wholly free of difficulty," but that "[o]n balance . . . the promise of nonentanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application." *Id.* at 604, 99 S.Ct. at 3026. The *Jones* majority rejected the view of four dissenting justices that civil courts must defer to authoritative resolution of prop-

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12. The *Jones* Court summarized the "neutral principles of law" approach developed by Georgia courts as involving an examination of the deeds to the properties, the state statutes dealing with implied trusts, the corporate charter, the church constitution, and the Book of Church Order to determine whether there was any basis for a trust in favor of the general church. In the absence of any basis in these documents for finding an implied trust, the court would find that legal title to the property was held by the local church.

13. *Jones* involved a dispute over rights to the Vineville Presbyterian Church in Macon, Georgia. A majority of the Vineville church members voted to separate from the Presbyterian Church in the United States (PCUS). The PCUS responded by declaring that the minority of the Vineville church who remained loyal to the PCUS constituted the "true congregation of Vineville Presbyterian Church." The minority faction brought a class action in state court seeking declaratory and injunctive orders establishing their right to exclusive possession and use of the Vineville church property. The Georgia courts, purporting to apply a "neutral principles of law" approach, awarded the property rights to the majority faction.

perty disputes within the church itself in order to avoid either: reviewing and revising church decisions on matters of religious doctrine and practice; or interfering indirectly with the religious governance of those who have formed the association and submitted themselves to its authority. *See id. at* 618, 99 S.Ct. at 3033 (Powell, J., dissenting). Justice Blackmun's opinion for the Court reasoned that resolving church property disputes by a rule of compulsory deference to religious authority would create a greater risk of excessive government entanglement in religious affairs than would application of the "neutral principles of law" method:

> Under [the dissent's] approach . . . civil courts would always be required to examine the polity and administration of a church to determine which unit of [church] government has ultimate control over church property. In some cases, this task would not prove to be difficult. But in others, the locus of control would be ambiguous . . . . In such cases, the suggested rule would appear to require "a searching and therefore impermissible inquiry into church polity."

Id. at 605, 99 S.Ct. at 3026 (quoting *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 723, 96 S.Ct. 2372, 2387, 49 L.Ed.2d 151 (1976)).[14]

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14. *See also Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 369, 90 S.Ct. 499, 500-02, 24 L.Ed.2d 582 (1970) ("To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine.") (Brennan, J., concurring). The *Jones* majority also concluded that Georgia courts might have to defer to the decision of the highest ecclesiastical au-

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The *Jones* majority thus recognized and reaffirmed the importance of the second major first amendment interest favoring judicial noninvolvement in a religious dispute: that where religious organizations establish rules for their internal discipline and governance, and tribunals for adjudicating disputes over these matters, "the Constitution requires that civil courts accept their decisions as binding upon them." *Milivojevich*, 426 U.S. at 725, 96 S.Ct. at 2387-88. The disagreement between the justices in *Jones* reflects differing assessments of the extent to which resolution of the property dispute at issue in that case by adherence to this principle might involve a greater intrusion into religious affairs than would resolution by the "neutral principles of law" method.

The rule of deference to decisions of ecclesiastical bodies on matters of internal church governance was articulated in *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929), where Justice Brandeis wrote for the Court that "because the appointment [to the chaplaincy] is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them." *Id.* at 16, 50 S.Ct. at 7. Justice Brandeis concluded that "[i]n the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts

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thority within the church on the question of which of two factions within the local church constituted the "true" congregation of that church because resolving this question might involve issues of religious doctrine.

as conclusive, because the parties in interest made them so by contract or otherwise." *Id.* at 16, 50 S.Ct. at 7-8.

Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952), and *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.E.2d 151 (1976), made it clear that the principle of deference to decisions of church authorities applies to disputes concerning matters of internal church governance. In *Kedroff*, the Court held that a state may not dictate which of two factions within the Russian Orthodox Church has the power to appoint the ruling hierarchy for the Russian Orthodox churches in America. The Court found that state legislation regulating matters of "church administration, the operation of the churches, [and] the appointment of clergy, by requiring conformity to church statutes adopted at a general [church] convention," was contrary to the first amendment because, in the absence of fraud, collusion, or arbitrariness,[15] matters of church governance are for the church to decide free from state interference.[16] *Id.* at 107-08, 116, 73 S.Ct. at 150, 154.

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15. *Kedroff* quoted from *Gonzalez* as indicating that fraud, collusion, or arbitrariness might constitute an "improper method of choice" of clergy that might justify civil court review of the matter.

16. Although *Kedroff* involved state *legislation*, any doubt as to the applicability of the Court's holding to judicial proceedings was resolved when the St. Nicholas Cathedral controversy came before the Court a second time after the state courts attempted to resolve the controversy on the basis of the common law. *See Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960) ("[i]t is not of moment that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power which we are asked to scrutinize.").

In *Milivojevich*, the Court further limited the "marginal civil court review" endorsed in *Gonzalez*[17] by overruling *Gonzalez* to the extent that it allowed civil courts to decide whether the decision of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations and was therefore not "arbitrary." *Milivojevich*, 426 U.S. at 713, 96 S.Ct. at 2382. The Court found that such "arbitrariness" review is inconsistent with the "general rule" that "religious controversies are not the proper subject of civil court inquiry," and that "civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law."[18] *Id.* Thus, the Court concluded that civil courts may not decide, consistent with the first amendment, whether the church complied with the procedural rules contained in the church constitution and penal code in defrocking one of its bishops. Similarly, the Court held that civil courts may not use the guise of the "neutral principles" approach to delve into issues concerning whether the general church acted beyond its authority under the church constitution in declaring a reorganization of the diocese. *Id.* at 721-24, 96 S.Ct. at 2386-87.

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17. *See also Kedroff*, 344 U.S. at 116, 73 S.Ct. at 154 ("Freedom to select the clergy, *where no improper methods of choice are proven*, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion." (citing *Gonzalez*).

18. The Court left open the possibility that civil courts might engage in " 'marginal civil court review' under the narrow rubrics of 'fraud' or 'collusion' when church tribunals act in bad faith for secular purposes." *Id.* at 713, 96 S.Ct. at 2382.

Balanced against these two first amendment considerations favoring civil court noninvolvement are the state interests in resolving disputes concerning rights to property and the individual interests in adjudicating before a civil court forum. Even where church property is involved, the state has a strong interest in rapid resolution of disputes concerning ownership rights to property. *See, e.g., Jones v. Wolf*, 443 U.S. 595, 602, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775 (1979) ("The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively"); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445, 89 S.Ct. 601, 604, 21 L.Ed.2d 658 (1969) ("It is of course true that the State has a legitimate interest in resolving property disputes, and that a civil court is a proper forum for that resolution."); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 120, 73 S.Ct. 143, 156-57, 97 L.Ed. 120 (1952) ("There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition and use of property."). The *Jones* Court's refusal to adopt a rule of compulsory deference to authoritative decisions of church bodies was grounded at least in part upon the fact: (1) that the state ultimately must determine who has the rights to the property; and (2) that doing so by deference to church tribunals would be difficult in many cases because ambiguity in the locus of church authority may itself necessitate an impermissible inquiry into church polity. *See also Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 370, 90 S.Ct. 499,

501, 24 L.Ed.2d 582 (1970) ("[U]se of the *Watson* approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without . . . extensive inquiry into religious polity.") (Brennan, J., concurring). In *Milivojevich,* the Court emphasized that no change in formal title to property was involved in the defrocking and church reorganization at issue in that case. 426 U.S. at 718-19 & n. 11, 96 S.Ct. at 2385. The *Milivojevich* Court's rejection of the state court's attempt to apply "neutral principles of law" to decide whether the reorganization at issue complied with the church constitution suggests that the state's interest in providing a civil court forum for ecclesastical disputes is substantially diminished where the controversy does not concern formal title to property. *See id.; Bouldin v. Alexander,* 82 U.S. (15 Wall.) 131, 21 L.Ed. 69 (1872) ("It may be conceded that we have no power to revise or question ordinary acts of church discipline, or of excision from membership. We have only to do with rights of property.").

Individual grievants undoubtedly have some interest in obtaining a civil court adjudication of their ecclesiastical claim. Where religious organizations create a system of ecclesiastical tribunals to hear disputes concerning church governance or administration, however, the grievants' interest in obtaining civil court review of that tribunal's decision is substantially lessened. *See, e.g., Watson v. Jones,* 80 U.S. (13 Wall.) 679, 727, 20 L.Ed. 666 (1872) (whenever questions of "ecclesiastical rule, custom or law have been decided by the highest . . . church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them"); *Milivo-*

jevich, 426 U.S. at 713, 96 S.Ct. at 2382 (constitution mandates that civil courts "are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law"). Nevertheless, the grievants retain a strong interest in obtaining a civil forum where the religious tribunal's decision is tainted by fraud or collusion. *See, e.g., Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929); *Milivojevich, supra.*

III

Applying this balance of interests to the facts of this case, we conclude that the district court correctly found that civil court resolution of this controversy would violate the first amendment. This controversy is one step removed from a major doctrinal conflict between two factions within the Southern Baptist Convention. Although a civil court might be able to avoid questions of religious beliefs or doctrines in ruling on the issue of whether the SBC Committee on Boards elected at the 1985 Convention was entitled to serve in that capacity, "questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern." *Milivojevich*, 426 U.S. at 716, 96 S.Ct. at 2384.

We need not rely, however, upon the risk that a court would have to resolve questions of religious doctrine and belief in order to decide this case because other interests implicated by the controversy strongly favor deferring to the decisions of the messengers at the 1985 Convention and the 1985 SBC Executive Committee. First, the SBC

provides its own rules for determining how the membership of the Committee on Boards is to be selected. In this case, a majority of messengers at the 1985 Convention voted in favor of the nominees for the Committee on Boards submitted by the Committee on Committees.[19] Appellants appealed to the Executive Committee of the SBC to contest Chairman Stanley's rulings. The Executive Committee rejected the arguments of appellants' counsel and affirmed the election of the 1985 Committee on Boards. The first amendment strongly favors deference to such a decision by the highest church judicatory concerning a matter of church governance.[20] *See Milivojevich, supra.* Second, the controversy bears only a tangential relationship to property rights. Although appellants contend that the SBC bylaws create enforceable contract rights under

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19. SBC bylaw 35(1) provided that "[a]ll propositions, decisions, and choices shall be by a majority vote of the registered messengers present and voting."

20. Appellants' argument that the SBC has a congregational, rather than a hierarchical, form of church goverance does little to help their position. The distinction drawn in *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1872) between the types of congregational and hierarchical church politics was relevant only to determining the ecclesiastical body to which the civil court must defer in determining rights to use of property. If a congregational form of government is involved and the will of a majority of church members is to control, then the court will enforce the right of a majority of members to use the church property. If the congregational church has officers "in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property." *Id.* at 725, 20 L.Ed. 666. Under either form of congregational polity, however, the election of the Committee on Boards by the messengers at the 1985 Convention and the affirmance of that decision by the Executive Committee are entitled to deference.

Georgia law, the denial of these alleged rights is unrelated to any question of ownership of property that would give rise to a state interest in assuring prompt resolution of the controversy by a civil court forum. The state has little interest in determining which individuals within the SBC choose the nominees for positions in which they administer assets that are undisputably owned by the SBC. Finally, appellants' interest in obtaining a civil court forum is insubstantial. Appellants received a hearing and a decision on their claims before the highest SBC tribunal. Moreover, appellants have made no allegation of fraud or collusion on the part of Chairman Stanley or any SBC officer or organization.

In balancing these interests, we hold that the first amendment bars civil court resolution of this controversy concerning a matter of ecclesiastical government.[21] We therefore affirm the judgment of the district court dismissing this action.

AFFIRMED.

EDMONDSON, Circuit Judge, concurring:

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21. We do not, of course, express an opinion as to whether appellants are correct in arguing that this conclusion overrules several decisions of the Georgia courts. It is sufficient to point out that Georgia courts are powerless to adjudicate religious disputes where doing so violates the United States Constitution. Appellants' argument that denial of civil court review of this case would "establish" a religion is also without merit. *Cf. Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, — U.S. —, 107 S.Ct. 2862, 97 L.Ed.2d 273 (1987) (section 702 of Civil Rights Act of 1964 exempting religious organizations from Title VII's prohibition against discrimination in employment on the basis of religion may be applied to secular nonprofit activities of religious corporation without violating establishment clause).

A generous zone of judicial noninterference surrounds religious affairs. In certain church property disputes, courts are allowed to adjudicate the controversy by application of neutral legal principles; but the present case is not such a dispute. To exercise judicial authority in this matter would represent a change in the law. I concur in the court's judgment because adjudication of this case by the federal courts would require the courts to favor the view of one element of the Southern Baptist Convention over the view of another directly concerning the Convention's governance. As I understand our history, the Framers of the Bill of Rights did not intend for federal officers to express official preferences regarding the internal administration of religious groups.

SELECTED BYLAWS OF THE SOUTHERN BAPTIST CONVENTION

11. *Parliamentary Authority*: The parliamentary authority of the Convention shall be *Robert's Rules of Order* (latest revised edition).

16. *Election of Board Members, Trustees, Commissioners, or Members of Standing Committees*:

(1) The Committee on Boards, Commissions, and Standing Committees shall be composed of two (2) members from each qualified state, who shall be nominated to the Convention by the Committee on Committees. One (1) person named to the committee from each state shall be a person not employed full time by a church or denominational agency. Persons named to the Committee on Boards, Commissions, and Standing Committees shall have been resident members for at least one (1) year of Southern Baptist churches either geographically within the states or affiliated with the conventions of the states from which they are elected.

(2) The Committee on Boards, Commissions, and Standing Committees thus chosen shall carefully prepare its report through the year, guarding the provisions of the Constitution and Bylaws, and shall nominate to the next Convention the following:

(a) Members of the general boards in accordance with Article VI, Section 1, of the Constitution.

(b) Trustees, directors, or boards of the institutions of the Convention in accordance with Article VI, Section 2 of the Constitution.

(c) All standing committees.

(d) Members of the Christian Life Commission, the Education Commission, the Radio and Television Commission, the Commission on the American Baptist Theological Seminary, the Historical Commission, the Brotherhood Commission, and the Stewardship Commission.

(e) The Executive Committee.

* * *

(8) The report of the Committee on Boards, Commissions, and Standing Committees shall be released to Baptist Press no later than 45 days prior to the annual meeting of the Convention and shall be published in the first day's *Bulletin.* The report may be amended on the floor of the Convention by a majority vote of those voting. Persons desiring to challenge the report of the Committee on Boards, Commissions, and Standing Committees are encouraged to publicize the nature of their challenge sufficiently in advance of the annual meeting of the Convention to allow information concerning the challenge to be made available to Convention messengers.

32. *Adoption of Reports*: The adoption of recommendations contained in reports to the Convention shall not bind the Convention on any other matters in the body of the reports; but the Convention reserves the right to consider and amend the body of all reports.

35. *Voting*: (1) All propositions, decisions, and choices shall be by a majority vote of the registered messengers present and voting, except where provisions have been made for a greater than majority vote. The vote

shall be taken by ballot, by voice, by rising, by show of hands, by common consent, or by some other acceptable method. (2) In order to cast a vote, a messenger must be present at the time the vote is taken. Voting by proxy is not permitted.